



## OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER

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Re: Proposed Acquisition of Control of Humana Employers Health Plan of Georgia, Inc. ("Humana") by Aetna Inc. ("Aetna") – Questions Regarding Impact Upon Existing Networks and Provider Agreements O.C.G.A. § 33-13-3(d)(1)(D) and (F).

Dear Mr. Farber and Ms. Lenahan:

We received your response letter, dated August 28, 2015 to the captioned questions. ("Response Letter"). We are rephrasing question number 1, following up to the responses to questions 2-5, and asking that Aetna respond to questions 6 and 7. In addition, we have further inquiries relating to existing networks and provider agreements. Finally, both Aetna and Humana should provide separate responses, as appropriate, given your objection to sharing information on antitrust grounds.

### I. McCarren-Ferguson Act ("Act") and Federal Antitrust Laws

Under the Act the Federal Antitrust Laws do not apply to the business of insurance. The various insurance policies offered by Aetna and Humana are not subject to the Federal Antitrust

Laws. All managed care policies (*e.g.*, HMO, PPO, POS, EPO, etc.) include networks of providers with whom the insurer (Aetna and Humana) has contracted (or through a rental network arrangement) and from whom the enrollee can access care under the policies. While Federal Antitrust Laws and the Georgia Insurance Code (“Code”) apply to the arrangements between providers and insurers, Federal Antitrust Laws do not apply to the insurance policies and the commitments made thereunder, which includes access to providers and network continuity and adequacy.

## II. Follow-up to Response Letter

Aetna and Humana should provide separate responses to each of the questions below unless directed otherwise within the questions. “Dual Providers” means a provider who has a contract with Aetna and Humana.

1. Confirm that you do not prohibit providers with whom you contract, by contract or otherwise, from entering into provider agreements with other payors or insurers? (Your response should be **yes or no** followed by any explanation you deem appropriate, if any).
2. Do your provider agreements address which contract governs for Dual Providers. (Your response should be **yes or no** followed by any explanation you deem appropriate, if any).
3. If you responded “yes” to question 2, then provide an example copy of the provider agreement and a pinpoint citation. If you responded “no” to question 2, then explain your current understanding of which provider agreement will govern.
4. Explain what, if any, impact the acquisition will have upon providers who only have provider contracts with Humana? If there are relevant provider contract terms that apply to this issue please provide an example copy of the Humana contract and a pinpoint reference(s) to the controlling language. (Only HUMANA need answer this question).
5. As of the date of your response does Aetna intend to enter into provider agreements with providers who only have provider contracts with Humana? (Only AETNA need answer this question).
6. Confirm or correct the Department’s understanding that as of the date of your response you are not aware of any changes that will be made to your existing provider networks, including existing standards that are utilized by you for network adequacy purposes.
7. You failed to respond to question 6 set forth in the Department’s letter of August 12, 2015; provide a response now or confirm that you intended to be nonresponsive.
8. You failed to respond to question 7 set forth in the Department’s letter of August 12, 2015; provide a response now or confirm that you intended to be nonresponsive.

## III. New Inquiries

Aetna and Humana should provide separate response to each of the questions below unless directed otherwise within the questions. “Dual Providers” means a provider who has a contract with Aetna and Humana.

9. Provide a copy of your network adequacy standards. NOTE: Network adequacy standards refer to the standards you create internally and which you provide to independent accreditation organizations (such as NCQA, URAC, etc.) for purposes of reviewing your provider network.

Please feel free to contact me or Trey Sivley with any questions.

Regards,

/s/ Scott Sanders

Scott Sanders  
L&H Supervisor  
Insurance and Financial Oversight Division

Cc: Trey Sivley (via email)  
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